

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 8-16-75545-reg

4 Adv. Case No. 8-16-08178-reg

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6 In the Matter of:

7

8 DOWLING COLLEGE,

9

10 Debtor.

11 - - - - - x

12 ZAIKOWSKI,

13 Plaintiff,

14 v.

15 DOWLING COLLEGE,

16 Defendants.

17 - - - - - x

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1 United States Bankruptcy Court
2 290 Federal Plaza
3 Central Islip, New York 11722
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5 August 28, 2017

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21 B E F O R E:
22 HON. ROBERT E. GROSSMAN
23 U.S. BANKRUPTCY JUDGE
24

25 ECRO: UNKNOWN

1 8-16-08178-reg Zaikowski v. Dowling College

2 HEARING re [4] ADJ Summons and Notice of Pre-Trial Conference

3
4 8-16-75545-reg - Dowling College

5 HEARING re [74] ADJ Order Scheduling Initial Case Management
6 Conference.

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8 HEARING re [347] Motion to Approve and Authorize Procedures for
9 the Turnover of the Debtor's Federal Perkins Loan Portfolio by
10 Lauren Catherine Kiss on behalf of Dowling College.

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25 Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

UNITED STATES DEPARTMENT OF JUSTICE

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1 P R O C E E D I N G S

2 CLERK: Matter 50, Zaikowski v. Dowling College, and
3 Matter #51 and 52, Dowling College.

4 MS. ROUPINIAN: Good afternoon, Your Honor. Rene
5 Roupinian of Outten & Golden, appearing on behalf of Lori
6 Zaikowski in the certified class.

7 MR. SOUTHARD: Good afternoon, Your Honor. Sean
8 Southard of Klestadt Winters Jureller Southard & Stevens, on
9 behalf of the Defendant, Dowling College.

10 MR. WARMUTH: Glenn Warmuth, Stim & Warmuth, for
11 Kimberly Poppiti.

12 MR. FRIEDMAN: Good afternoon, Your Honor. Ronald
13 Friedman from Silverman Acampora, counsel for the Committee.

14 MR. YANG: Good afternoon, Your Honor. Stan Yang for
15 the United States Trustee.

16 MR. KNAPP: Good afternoon. James Knapp, Assistant
17 U.S. Attorney for the Department of Education. Good afternoon.

18 MR. KLEINBERG: Howard Kleinberg, Meyer Suozzi for
19 the Dowling Trustees.

20 THE COURT: Okay.

21 MR. SOUTHARD: Good afternoon, Your Honor. Again,
22 for the record, Sean Southard on behalf of Dowling College.

23 Your Honor, we have just two matters on today's
24 calendar. One is the pretrial -- adjourned pretrial associated
25 with the WARN Act litigation by Plaintiff, Zaikowski, and the

1 other matter is the adjourned hearing having to do with the
2 Debtor's Perkins loan portfolio.

3 Your Honor, I would propose to start with the WARN
4 Act pretrial.

5 THE COURT: Why don't we start with the status; we're
6 all closed?

7 MR. SOUTHARD: I would be happy to start with the
8 status, Your Honor. Yes, we have closed. I'm pleased to
9 announce we've closed successfully the Oakdale transaction.
10 The proceeds are sitting in the Debtor's Debtor-in-possession
11 account with Signature Bank, and we are discussing what amounts
12 of proceeds to potentially pay down to the secured creditors
13 associated with that Oakdale sale. There have been various
14 discussions among the creditors, the creditors' committee, and
15 ACA Financial Guaranty Corporation, who effectively holds the
16 first line on the Oakdale campus and now, the resulting
17 proceeds from the sale.

18 And in consultation with the Debtors, we have looked
19 at the settlement construct that the creditors reached and
20 tried to come up with a model to follow that, the settlement
21 construct, with various assumptions -- now one of those
22 assumptions, we actually have an actual number before where the
23 Oakdale sale having concluded -- and believe that, with
24 reasonable reserves, approximately \$22 million of the roughly
25 \$26 million could be paid down to ACA.

1 THE COURT: Will that be paid with the Court's
2 approval or without?

3 MR. SOUTHARD: Well, Your Honor, I think we obviously
4 wanted to discuss that with Your Honor today. And there is a
5 mechanism that exists under the DIP note, which would in effect
6 be a mandatory prepayment by the Debtor once it receives the
7 proceeds of the collateral.

8 That said, because of the magnitude of the dollars
9 that we're talking about and the consequence to this case and
10 its ultimate creditor recovery, we certainly wanted to discuss
11 that with Your Honor this morning. And before we did that, we
12 have discussions with the different creditor constituents about
13 the reasonableness of doing that now.

14 So I believe, and I don't want to speak for committee
15 counsel, but I believe that the committee is in agreement and
16 has been very much in the forefront of these discussions about
17 an appropriate reserve. And that roughly the numbers I
18 articulated of a \$4 million reserve, give or take, is something
19 that they're amenable to, but I'll be happy to let them speak
20 to that.

21 THE COURT: Well, what I'm -- I mean, people have
22 whatever rights they have. But what I'm concerned about is
23 one, there are a lot of -- you haven't received this WARN Act
24 issue yet and those folks and whatever they may or not be
25 entitled to. And since no plan has been filed, I don't have

1 any idea of what the costs will be associated with liquidating,
2 resolving, whatever claims the estate may have, and that it has
3 adequate resources to commence those claims and to bring them.

4 I was a little -- I think this was probably put in a
5 document that I signed, so it's not up to me. But when I saw
6 that the deposit that had been forfeited by the first buyer was
7 distributed to the secured creditor, I think the committee
8 agreed to.

9 MR. SOUTHARD: Yes, Your Honor.

10 THE COURT: All right, as part of their deal. I've
11 never concluded that those funds should have gone there. But
12 you all -- and I said it at the time -- you all agreed to that,
13 and so I didn't get involved in that at that point. But I was
14 never really convinced -- and it doesn't matter -- that they
15 had a secured right to those funds.

16 Now, I note -- because I've been through this once
17 before on the exact same issue in a case called Brown
18 Publishing. And, but again, that was part and parcel of what I
19 understand was the stipulation between the committee and the
20 secured creditors that didn't create for the committee, for
21 want of a better term, carveouts. So that was a business deal
22 and I was okay.

23 But I do want to be careful. I mean, there's another
24 large chunk of property in this case that will cost something
25 to get from here to there. There may be -- I don't know, but

1 there might have been total (indiscernible) and maybe
2 adversaries that need to be filed and funded, and I don't want
3 a debtor that's insolvent.

4 MR. SOUTHARD: Understood, Your Honor.

5 THE COURT: Now, again, if this belongs to the
6 secured creditor, it belongs to them.

7 MR. SOUTHARD: Understood, Your Honor. And we have
8 thought about the same concerns that Your Honor is raising.
9 There is a DIP facility in place. The expectation is that the
10 funding will continue through the conclusion of an effective
11 date on the plan because, among other reasons, we do have
12 another sale to run and conclude.

13 THE COURT: Well, what's the secured creditors'
14 position? They've been paid down -- they will have been paid
15 down from this. They've been paid down from houses. How much
16 are they actually owed?

17 MR. SOUTHARD: Well, recall, Your Honor, that there
18 are two different sets of secured creditors, for lack of a
19 better word.

20 THE COURT: In total was about 60, right?

21 MR. SOUTHARD: Give or take, Your Honor, yes. And
22 the largest of those two pieces is about \$38 million as of the
23 petition date, and that is the ACA piece or the 2006 bonds.
24 Those would be the facility that would be paid down fairly
25 dramatically with these Oakdale proceeds, but they would still

1 hold a significant secured claim that would require a paydown
2 from the Brookhaven sale.

3 THE COURT: Yeah. There's 112 acres in Brookdale,
4 which I have no idea what it's worth. It could be worth a lot.
5 But the remaining secured debt is 50 percent -- I'm not saying
6 to whom, but in total, and it is a non-cash flow entity.

7 MR. SOUTHARD: Correct.

8 THE COURT: So the only monies that can support this
9 thing for the next year, because it'll take I think longer than
10 everybody thinks, is from whatever monies you have in the bank.

11 MR. SOUTHARD: Correct, Your Honor. We would either
12 settle funds with proceeds of the Oakdale sale, or those
13 proceeds could effectively pay down the outstanding debt and
14 then additional borrowings occur. Those are the two options.

15 THE COURT: You mean borrow post-petition against the
16 other property?

17 MR. SOUTHARD: Correct, Your Honor.

18 THE COURT: As long as these distant creditors will
19 be subordinate to it because, you know, you're going to have to
20 make them subordinate. I don't think the bank will put up on
21 raw land the junior -- they may. Who knows? I just need you
22 to think about it. And my main concern with the WARN Act
23 question --

24 MR. SOUTHARD: Yes, Your Honor.

25 THE COURT: There's a decision -- did the Circuit

1 just issue, was it the Second Circuit on WARN Act that just
2 issued one? Yeah. So if people are watching WARN Act claims
3 then.

4 MR. SOUTHARD: Your Honor, I could talk a little bit
5 about where we are with the WARN Act.

6 THE COURT: Please.

7 MR. SOUTHARD: It might be appropriate at this point.
8 The parties met for a full-day mediation with the assistance of
9 Yann Geron, who was the appointed mediator by Your Honor, and
10 made progress that day. It was determined that at the close of
11 the day that additional information would be required,
12 primarily on the Plaintiff's side, to better the potential
13 expected damages; and, in addition, some additional information
14 about the defenses that the Debtor was asserting.

15 And since that time, there have been a lot of
16 exchanges of information, primarily by the Debtor to the
17 Plaintiff. And we're at a point now where I think we're just
18 about done with that information exchange, the informal
19 mediation-based information exchange, and then could recommence
20 settlement discussions.

21 My hope would be that we'll know in the next, say, 30
22 days whether we're going to have a settlement or not or whether
23 we need to go into litigation in a more meaningful way. And it
24 certainly is the hope of the Debtor, and I think I speak for
25 the Plaintiff when I say, and the hope of the Plaintiff as well

1 to try to find a constructive resolution. And, again, we have
2 made progress, but we're just not there yet.

3 So what I would ask of Your Honor, subject to hearing
4 from Plaintiff's counsel, is that we potentially have a holding
5 date of roughly 30 days where we would come back to Your Honor
6 and report either we were successful in settling the litigation
7 and report to Your Honor where we are or, alternatively, talk
8 to Your Honor about potentially moving forward with discovery
9 in the true sense.

10 THE COURT: And Mr. Geron is going to stay involved
11 because he originally was just --

12 MR. SOUTHARD: Yeah. Your Honor, as a technical
13 matter, the mediation order -- the time to conclude that
14 mediation was August 1st, so we are beyond that. Mr. Geron has
15 stayed involved insofar as, you know, communicating with the
16 parties. Where are you and how are things?

17 THE COURT: No, he's a -- I've known him for many,
18 many years. It's fine. I think -- I would have no reason, as
19 long as you guys wanted to continue, to continue the order.

20 MR. SOUTHARD: Yeah. I think at this point, what I -
21 - and, again, I don't want to speak for the Plaintiff, but I
22 think we are able to trade positions effectively without the
23 mediator. If we get into a log jam in the next interim period,
24 I would look to bring the mediator back in for assistance in
25 clearing such a log jam.

1 THE COURT: Does any of this require the consent of
2 the secured creditor to reach a settlement?

3 MR. SOUTHARD: Well, ultimately, when we reach a
4 settlement -- and, hopefully, we reach a settlement --
5 certainly, the creditors will have a say in that. Ultimately,
6 the dollars that we're talking about, in terms of priority
7 claims anyway, will need to be paid to bring this case out of
8 Chapter 11 through a plan. And so, we have kept the creditors
9 -- the Debtor has kept the creditors abreast of where we are in
10 terms of status, but they have yet to weigh in and get to the
11 weeds on the ultimate dollars that we're talking about.

12 THE COURT: But aren't the dollars you're trading
13 their money at this point?

14 MR. SOUTHARD: Yes, Your Honor, effectively they are.
15 But because the creditors don't understand the merits of the
16 actual litigation, it's -- I believe it's necessary for the
17 Debtor to reach a proposed resolution based on the merits, and
18 then deal with the mechanics of the dollars and cents that must
19 be paid out to make a plan go effective. Again, they are not
20 in regards in any respect, but they have not been an active
21 participant in the mediation.

22 THE COURT: How do you know what your position can be
23 if it's not your money?

24 MR. SOUTHARD: Well, we know ultimately what we are -
25 - we think we're willing to pay in terms of merits. Basically,

1 what we're talking about is the strength of the one major
2 defense. And we have a view about the strength and the
3 likelihood of success on that; Plaintiff has a different view.

4 THE COURT: But could the secured -- could the
5 secured creditors or a secured creditor just say no, my bonds
6 don't commit me to take less than what I could get to settle a
7 claim that's not against me?

8 MR. SOUTHARD: They've not given any indication to
9 date that such a position would be put forth. But recall the
10 construct of the settlement -- the intercreditor settlement --
11 that was reached provided that effectively, unsecured creditors
12 and secured creditors would share 50/50 the cost of priority
13 claims necessary to exit Chapter 11.

14 THE COURT: What does that mean?

15 MR. SOUTHARD: Meaning --

16 THE COURT: They have to put up 50 percent?

17 MR. SOUTHARD: If the priority claims pool turns out
18 to be \$2 million, 1 million of that would effectively be paid
19 out of the secured creditors' otherwise take from proceeds, and
20 then the other million would first come from the unsecured
21 creditor proceeds.

22 THE COURT: For which somebody has to put -- put an
23 unsecured creditor pool together.

24 MR. SOUTHARD: Correct, Your Honor. And that's
25 ultimately, when we talk about the timing for a plan

1 confirmation and proceeding with a plan and ultimately, the
2 effective date of a plan, that's one factor that we take into
3 consideration. Is we think we need, based on our model, to
4 close the Brookhaven sale transaction before the unsecureds
5 will have enough money.

6 THE COURT: Or for the unsecured creditors or for the
7 committee to pursue sources of revenue that are not controlled
8 by the secured creditor.

9 MR. SOUTHARD: To the extent they exist.

10 THE COURT: To the extent they exist.

11 MR. SOUTHARD: Those would be really limited at this
12 point, I think, to litigation recoveries, which I, again, can
13 let the Committee counsel speak to. But I know that they have
14 considered a potential claim against D&O insurance and targets
15 of that sort, but I don't know where they are with that. But I
16 think my take on that, Your Honor, from a timing perspective,
17 would be unlikely that they'll get to a recovery relative to
18 that type of asset, if any.

19 THE COURT: Yeah, but I suspect that the -- I'm just
20 guessing -- that in the WARN Act case -- this is an example --
21 the settlement will come in two tranches. There'll be money
22 that can be paid, which exists because it represents 50 percent
23 and it's sitting in the bank -- that's the secured money -- and
24 50 percent on the claim.

25 MR. SOUTHARD: Could be, Your Honor. There are also

1 other priority claims that will need to be dealt with for
2 purposes of confirmation. So it's not --

3 THE COURT: Well, that's the other thing. That's why
4 I want to see somebody start putting in a plan, because if this
5 case can't go through a plan, it's got to convert it. That'll
6 be it.

7 MR. SOUTHARD: Yeah.

8 THE COURT: I'm not even sure I can convert a not-
9 for-profit.

10 MR. SOUTHARD: I don't think you can legally.

11 THE COURT: I can't convert it, but you can.

12 MR. SOUTHARD: Correct.

13 THE COURT: You can convert it. I can't forcefully
14 convert it. Nobody can require the conversion, but, I mean,
15 I'd rather not end up there.

16 MR. SOUTHARD: I share your position on that, Your
17 Honor. So I think from a big picture perspective, we envision
18 in the very near future moving forward with a proposed sale
19 process for the Brookhaven campus. And in a best-case
20 scenario, would expect to see a closing around year end or the
21 first quarter of --

22 THE COURT: Really?

23 MR. SOUTHARD: -- 2018. And, again, in an ideal
24 scenario, we would have a plan confirmation process that would
25 take place roughly in tandem with that closing on Brookhaven,

1 and swiftly exit Chapter 11 thereafter. That's, again, that's
2 sort of best laid plan.

3 THE COURT: So the town is cooperating out there?

4 MR. SOUTHARD: Your Honor, to date, the town has been
5 cooperating. We're -- there's certainly been a lot of
6 discussion with the town planning. At this point, we do not
7 expect to proceed further with planning before a sale
8 disposition. The belief is that we know about as much as we'll
9 be able to know relative to the future uses, and that any buyer
10 who will diligence the opportunity at this point will be able
11 to make their own conclusions about that future use.

12 THE COURT: Okay.

13 MR. SOUTHARD: So we think based on, again, the
14 information we're getting from the different parties that have
15 been retained by the Debtor, including the brokers, that it
16 would be a good time to go to market. And we hope to roll out
17 with a proposed sale process that will look a lot, I think,
18 like the Oakdale sale process with some minor changes to some
19 of the details.

20 THE COURT: All right. Well, that's good.

21 MR. SOUTHARD: That's our big picture plan. So in
22 terms of then the proposed potential paydown of proceeds, would
23 Your Honor like to see that on motion on notice?

24 THE COURT: Yes.

25 MR. SOUTHARD: Okay. We wanted to discuss that with

1 you today. So we will work on motion for that in the near term
2 and present that to Your Honor. We will serve certainly all
3 the lienholders, junior creditors, judgment holders, and the
4 like, and put that on before you. And we'll look at whether we
5 can -- how much of the current modeling we can share publicly
6 at this point to try to help Your Honor get a better
7 perspective of the big picture.

8 THE COURT: Okay.

9 MR. SOUTHARD: So then turning back to the WARN Act,
10 Your Honor, my proposal on behalf of the Defendant -- I'll be
11 happy to let the Plaintiff speak -- would be to ask for in
12 essence a 30-day adjournment of that matter to come back before
13 Your Honor on that.

14 MS. ROUPINIAN: Good afternoon again, Your Honor.
15 Rene Roupinian of behalf of Lori Zaikowski and the certified
16 class. I'm in concurrence. We've had an opportunity to speak
17 before the conference today, and I think a 30-day continuance
18 makes sense.

19 We had a very productive first day of mediation, but
20 we needed to really get our arms around the WARN damages
21 because, in this particular case, we have so many different
22 categories of employees. We have the full time and the part
23 time and the adjuncts and the instructors and so forth and so
24 on, and they've had different agreements and paid, in terms of
25 their compensation and benefits and so forth.

1 So it's been a process that I think has been very
2 productive. And we've been -- they've been terrific on the
3 other side producing what they can. We recognized that the
4 focus needed to be on the sale of the property and brining
5 money into the estate. So we've been patient, but we have been
6 moving forward, and Yann Geron has been helpful in that
7 process.

8 His efforts do not come at a discount, so we think it
9 does make sense to do as much as we can between the parties and
10 bring in Mr. Geron when we need him if we hit any sort of
11 roadblocks when we get to the point where we can actually start
12 talking about numbers and allocating risk based on the defenses
13 and so forth.

14 So we would propose, as well, that the Court set a
15 further status conference 30 days out.

16 THE COURT: When's the next -- Dowling here. When
17 are you going to put this on? You're going to have the motion
18 returnable sooner than you want this, I assume.

19 MR. SOUTHARD: I'm sure that the creditors would like
20 that, Your Honor.

21 THE COURT: They're not going anyplace.

22 MR. SOUTHARD: We probably -- we could probably have
23 our motion on file, and dependent really, subject to Your
24 Honor's calendar. I would think we would need 14 days' notice
25 at a minimum for that following Court rules.

1 THE COURT: It's not going to be the beginning of
2 October, so it'd have to be towards out to the 23rd, around
3 there? That would be the date.

4 MR. SOUTHARD: October --

5 THE COURT: 23rd. October 28th, no.

6 MR. SOUTHARD: I'm going in that direction.

7 THE COURT: You're going in the wrong direction. The
8 problem is that NCBJ is the beginning of October. And so, my
9 exalted position and I have to go that thing. And that takes
10 me to the 15th of October. Before that, we have trial dates.
11 So, no, that's probably the best you're going to get. You're
12 not going to do it in September; September's too soon, I guess.
13 What do we have in September?

14 MR. SOUTHARD: September 30 is a benchmark day.

15 THE COURT: Why?

16 MR. SOUTHARD: It'll save us some money on the
17 (indiscernible) for the distribution.

18 THE COURT: All right. I'll accept that. I know
19 what you're talking about, but I'll accept that. 25th or 27th,
20 would that be enough time to get everything out of the WARN Act
21 question? You guys could put the motion on.

22 MR. SOUTHARD: Yeah. Your Honor (indiscernible).

23 THE COURT: That, I know you can do.

24 MR. SOUTHARD: 27th Your Honor?

25 THE COURT: Okay. Mr. Friedman, does the 27th work?

1 MR. FRIEDMAN: Excellent, Your Honor. Thank you so
2 much.

3 THE COURT: We aim to please. 1:30, okay. Good
4 luck.

5 MS. ROUPINIAN: Thank you. And in terms of NCBJ,
6 I'll be speaking on the judgment panel, so hope to see you
7 there.

8 THE COURT: That's why she can get what she wants.
9 Friends of NCBJ are important to me these days.

10 MS. ROUPINIAN: Thank you.

11 MR. SOUTHARD: Your Honor, I intend to register for
12 the NCBJ immediately after this hearing.

13 MAN 1: I think I do too.

14 THE COURT: We actually put, like, moderate
15 (indiscernible). Are you there too? And there's a group of
16 lawyers in the Courthouse who I don't think can spell NCBJ,
17 spotting them two of the initials. They're all going, not
18 because of me, because it's in Vegas. So to some people, they
19 won't show up because it's in Las Vegas, and others want to go.
20 And I just can't imagine the headline, one of our Senators get
21 in touch with the National Conference of Bankruptcy Judges is
22 holding its convention in Las Vegas. I always wondered who
23 decided that was a good idea. It's like the Mohegan Sun thing
24 that we do every couple of years, go through the casino for it.
25 All right, so that's set. What else do we have on

1 today?

2 MR. SOUTHARD: So the only other item we have on,
3 Your Honor, is the adjourned -- Debtor's adjourned motion
4 having to do with the Perkins loan portfolio, and the Debtor's
5 proposed turnover of that loan portfolio.

6 This is Docket #347 that the Debtor filed back on
7 June 16th, and Your Honor initially heard in July. And we
8 discussed during that July hearing the question of whether
9 there was and is a property of the estate interest in that loan
10 portfolio that the Debtor is proposing to assign.

11 And since that point, Your Honor, the Debtor and
12 counsel to the U.S. Department of Education and the U.S.
13 Attorney's Office have had a couple of different conversations
14 trying to find a potential resolution that would recognize the
15 potential for that property in the estate interest.

16 And I believe as of the end of the week, basically,
17 Education was at a point where they felt from their perspective
18 under their rules and regulations, they were unable to
19 effectively give consideration to the bankruptcy estate for
20 Dowling's potential interest in the loan portfolio. And so on
21 Friday early evening, a brief was filed explaining their
22 position, which I will confess I have not had a full
23 opportunity to review myself because I was away. But, you
24 know, and I think it's possible that other parties might have
25 views to express --

1 THE COURT: Did anybody read it?

2 MR. SOUTHARD: -- in response to that.

3 THE COURT: I mean, I did. You read it.

4 MAN 1: I read it.

5 THE COURT: It's like class, the guy in the back
6 actually read the assignment.

7 MR. SOUTHARD: So, I mean, I generally understand
8 because we did have a discussion about their position.

9 THE COURT: You can spend an hour arguing if you'd
10 like. I'm going to leave, but you can spend an hour arguing.
11 The answer is -- there used to be that show with that old guy
12 with -- you know, I used to call it the old guy. The new show,
13 and the answer is, only because he got to talk.

14 You're partially right and you're partially wrong.
15 Certain of these dollars, I would find are property of the
16 estate. The single most interesting line is, it's 76 percent
17 give or take of these people that aren't going to pay these
18 loans back anyway, and then total interest is 300,000.

19 So if I take 20 percent of 300,000 -- or \$60,000,
20 give or take -- that the estate doesn't want to spend
21 litigating with you, the result here is probably I'm not going
22 to give you an order saying this is not the property of the
23 estate. I'm going to go with door number 2, unless somebody
24 objects, that the Debtor will abandon its interest, and leave
25 for another day the question of whether you're right or wrong

1 with regards to property of the estate.

2 So if you can live with that, that's the answer. I
3 mean, I could order it anyway. If you can't, then I'm not
4 going to give you anything and we'll litigate it.

5 MR. SOUTHARD: Your Honor --

6 MR. KNAPP: Which doesn't sound like a piece of cake
7 from the previous case.

8 THE COURT: What?

9 MR. KNAPP: It doesn't sound like a piece of cake you
10 had in the prior case.

11 MR. SOUTHARD: Your Honor, one thought that we on the
12 Debtor's side had after this development of, you know, late
13 last week. Is that perhaps, because there is a desire to
14 assign the loan portfolio as a mechanic, that perhaps we could
15 do what Your Honor is suggesting and leave open the question
16 the amounts of the value of the Debtor's interest in that loan
17 portfolio.

18 THE COURT: But I think the government's position is
19 it doesn't matter because once you go off the program, whatever
20 you put in, even if it's yours, now becomes theirs; is that
21 correct?

22 MR. KNAPP: Yes.

23 MR. SOUTHARD: That is their position, Your Honor.

24 THE COURT: So you would -- whatever, figuring out
25 the number is irrelevant; it's the legal concept. And I don't

1 know if you're right or wrong; it's a technical fight. And I
2 think the papers were good and somebody would have to respond.
3 But you're going to be responding over if you're right and
4 their numbers are right, not a mater- -- a rather small amount
5 of money. Because I think the original number is you had 20
6 some odd million dollars in this program, but you're down to
7 1.7 million?

8 MR. SOUTHARD: Yes.

9 THE COURT: Of which they -- somebody calculated 330
10 and some odd thousand dollars is your interest. Their position
11 is whatever you would get of that, and it doesn't matter
12 because somehow you have the contractual obligation that once
13 you leave the program, whatever you put in, even if
14 attributable to you, goes to them.

15 Now I'm not sure they'd win that in a Bankruptcy
16 Court; they may. I'm not sure whether it's been litigated yet.
17 It's just a question of whether, on a practical basis, you want
18 to use the money to do it.

19 MR. SOUTHARD: Yeah. We don't think it had been
20 litigated, Your Honor, which is why we originally filed the
21 motion the way we did. And, you know, I think in part we're
22 saying the same thing, whether it's abandonment or assignment
23 of the loan portfolio.

24 THE COURT: But are you going to transfer the money
25 to them or you're going to hold the money?

1 MR. SOUTHARD: No, Your Honor. We would -- we would
2 transfer the loan portfolio and the loans themselves for
3 administration by the government.

4 THE COURT: Okay.

5 MR. SOUTHARD: And then hold the money subject to a
6 further order of Your Honor's. When we've completed the
7 accounting, that will be necessary associated with that, and we
8 would leave open the question of property of the estate.

9 THE COURT: So they would get about 1.4 million, give
10 or take.

11 MR. SOUTHARD: They would actually get the loans.

12 THE COURT: Well, wait a minute.

13 MR. SOUTHARD: They have --

14 THE COURT: Packages.

15 MR. SOUTHARD: -- have certain principal amounts
16 outstanding, and they would then take over as the administrator
17 of those loans. The Debtor would no longer --

18 THE COURT: And then remit to you your piece if the
19 Court determined that?

20 MR. SOUTHARD: No, Your Honor. I think they would --
21 those loans would pass back into the program as their rules
22 contemplate.

23 THE COURT: Right.

24 MR. SOUTHARD: We have, however, about \$400,000, give
25 or take, in DIP accounts that is potentially tied to that loan

1 program because they're the proceeds of the Perkins loan
2 program. And instead of transferring that money now, we would
3 do so based on a further order from Your Honor after the
4 accounting is completed.

5 THE COURT: So you're not abandoning. You're
6 basically arguing that they have the right -- you'll transfer
7 to them the management of the portfolio. The Debtor wishes to
8 maintain its interest whatever extent in the cash and litigate
9 that issue with the government.

10 MR. SOUTHARD: Yes.

11 THE COURT: Or settle with them.

12 MR. SOUTHARD: Yes. And to the extent to which there
13 were any hypothetical interest in the loan portfolio, we could
14 preserve that interest -- that issue for a later date.

15 THE COURT: All right. What do you say, sir?

16 MR. KNAPP: I really don't have anything to all,
17 other than in the papers, Your Honor. Education's position,
18 though, is it's an all or nothing proposition. And if we're
19 talking about, as I think I understood Your Honor a moment ago,
20 that Education would administer the loans going forward if
21 there will be some carveout of the repayments.

22 THE COURT: That's wrong. I misunderstood that.

23 MR. KNAPP: Okay.

24 THE COURT: What they're saying is the bulk of these
25 loans go to you.

1 MR. KNAPP: On all the loan -- the portfolio of loans
2 that has, at least on paper, a value of about \$1.8 million
3 would be transferred back to Education.

4 MR. SOUTHARD: Would be assigned, right, under their
5 rules.

6 THE COURT: So there's cash in a bank.

7 MR. KNAPP: Yes.

8 THE COURT: That cash, they're not prepared to agree
9 to transfer to you.

10 MR. KNAPP: I understand that.

11 THE COURT: Your position is you owned it.

12 MR. KNAPP: Correct.

13 THE COURT: And that would be the issue to litigate;
14 do you own it or does the estate own it?

15 MR. KNAPP: Or as Your Honor articulated some weeks
16 ago, is there a percentage of ownership between the Department
17 of Education.

18 THE COURT: Well, I mean, again, what is their -- all
19 I care about is what is property of the estate. It is in the
20 Debtor's possession now. Your argument is that when they
21 terminated the participation in the program, which is by filing
22 bankruptcy, under your rules, it doesn't matter whether they
23 would own it or you would own it; it all goes back to the
24 government. That was the deal they made to participate in the
25 process.

1 MR. KNAPP: Is it predates the bankruptcy filing.

2 THE COURT: Yeah.

3 MR. KNAPP: If it's -- when Dowling enrolled in, for
4 lack of a better word, the Perkins program 50 odd years ago,
5 the agreement of their money was that this money would be used
6 only for the Perkins loan program.

7 THE COURT: Right.

8 MR. KNAPP: They didn't have rights to it before they
9 had the bankruptcy, other than for use --

10 THE COURT: You may be right.

11 MR. KNAPP: -- in the Perkins loan program.

12 THE COURT: I think --

13 MR. KNAPP: And then when they closed their doors in
14 June, I believe it was of '16 and the bankruptcy case was filed
15 in November of '16, they were obligated at that point to send
16 everything related to the Perkins loan program back to the
17 Department of Education.

18 THE COURT: The only issue is whether the intervening
19 bankruptcy alters the rights of the parties, as it does in
20 countless ways. May or may not, I don't know the answer to
21 that; they haven't put in any papers. So I think I would agree
22 today that you guys can enter an order saying that you get the
23 portfolio, and we leave this to a second fight. You have put
24 in papers already. They would respond. Then we see if we can
25 short circuit. We can get a hearing on it and finish it. But

1 I think it's better for you to get the portfolio today because
2 I think it should be serviced.

3 MR. SOUTHARD: I --

4 THE COURT: So this is without a prejudice to your
5 rights -- pardon me -- that it all belongs to you.

6 MR. SOUTHARD: From the Debtor's perspective, I think
7 that makes sense, Your Honor.

8 THE COURT: I'll do that.

9 MR. SOUTHARD: We'll try to work on a form of order
10 that is agreeable between the parties, and we'll include the
11 (indiscernible).

12 THE COURT: It has to be without prejudice to the
13 government's right to argue that just because it entered into,
14 or recognizes, whatever it is. That does not affect their
15 right to argue it's all theirs, nor does it affect your right
16 to argue that it's property of the estate and should be divided
17 in a certain fashion.

18 MR. SOUTHARD: Understood, Your Honor.

19 THE COURT: That would resolve at least that for
20 today. And then you'll put in papers, and we'll get a hearing
21 date. So it's on today, I think we resolved this motion -- no,
22 I'll carry this motion. Just put in an interim order on this,
23 and we'll use this motion to resolve the rest of it.

24 MR. SOUTHARD: Very well, Your Honor. And should we
25 assume this is carried to September 27th as well?

1 THE COURT: I'm not sure we'll have anything that day
2 because you guys got to put papers and then they'd want to
3 respond, but we'll use that as a holding date.

4 MR. SOUTHARD: Thank you, Your Honor. That concludes
5 everything we had on the calendar this afternoon.

6 THE COURT: Well, I don't have anything. Anybody
7 else want to talk about anything -- golf match, Yankee game,
8 anything?

9 MR. SOUTHARD: Thank you, Your Honor.

10 THE COURT: Court's adjourned.

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski
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Date: November 6, 2017

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